

123 FERC ¶ 61,303
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Kelson Energy III LLP

Docket Nos. ER08-446-001
ER08-954-000

ORDER ON NOTICE OF CANCELLATION
AND NOTICE OF CHANGE IN STATUS

(Issued June 25, 2008)

1. On May 14, 2008, Kelson Energy III LLC (Kelson) submitted a notice of cancellation requesting that the Commission cancel its market-based rate tariff, effective March 1, 2008. As discussed below, we accept for filing Kelson's notice of cancellation, effective July 14, 2008. In light of this, we dismiss as moot a notice of change in status under Order No. 652¹ notifying the Commission of certain changes in the characteristics relied upon to grant market-based rate authority to Kelson.²

I. Background

2. In its notice of cancellation, Kelson states that it was formed to acquire, own, and operate an 810 megawatt combined-cycle, natural gas-fired electric generating facility if approved in an auction process before the United States Bankruptcy Court for the Western District of North Carolina. As a result of the recent auction process, Kelson did not acquire the facility. Therefore, Kelson proposes to terminate its market-based rate tariff. Since no transactions occurred under the market-based rate tariff, cancellation will not affect any purchaser. Kelson requests waiver of the 60-day prior notice requirement in order to permit an effective date of March 1, 2008.

¹ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

² *Kelson Energy III LLP*, Docket No. ER08-446-000 (Feb. 14, 2008) (unpublished letter order).

3. In its notice of change in status,³ Kelson states that the indirect parent companies of Kelson, Harbinger Capital Partners Master Fund I, Ltd. and Harbinger Capital Special Situations Fund, L.P. (collectively, Harbinger), acquired seven percent of the voting securities of the Mirant Corporation (Mirant), which in turn owns several subsidiaries that are public utility companies under the Federal Power Act. Kelson contends that Harbinger will not have any control over Mirant or its subsidiaries, so the acquisition raises no market power concerns. Kelson further states that, even if generation owned by Mirant were considered, there would be no change in the results of Kelson's screen analyses. Therefore, Kelson argues, the Mirant transaction does not raise any horizontal or vertical market power concerns.

II. Notice of Filing and Responsive Pleadings

4. Notice of Kelson's notice of cancellation filing in Docket No. ER08-954-000 was published in the *Federal Register*, 73 Fed. Reg. 30,913 (2008), with interventions and protests due on or before June 4, 2008. None were received.

5. Notice of Kelson's change in status filing in Docket No. ER08-446-001 was published in the *Federal Register*, 73 Fed. Reg. 13,876 (2008), with interventions and protests due on or before March 21, 2008. Mirant filed a timely notice of intervention, protest and comments, arguing that it has not become affiliated with Kelson because there is no common control between the two companies. Mirant requests that the Commission accept Kelson's notice of change in status filing without ratifying the asserted basis for the filing or concurring that the filing was required by Commission regulations. Kelson filed an answer to Mirant's protest and comments.

III. Discussion

A. Procedural Matters

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely unopposed motion to intervene in Docket No. ER08-446-001 serves to make the entity that filed it a party to that proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Kelson's answer and will, therefore, reject it.

³ See 18 C.F.R. § 35.42(a)(2) (requiring sellers with market-based rate authorization to report any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority, including affiliation with any entity not included on the initial application that owns or controls generation facilities).

B. Substantive Matters

7. Kelson's notice of cancellation of its market-based rate tariff is accepted. Kelson requests an effective date of March 1, 2008. However, Kelson has not demonstrated good cause to justify waiver of the prior notice requirement for an effective date of March 1, 2008. Therefore, consistent with section 205 of the Federal Power Act⁴ and the Commission's regulations,⁵ the notice of cancellation is accepted, effective July 14, 2008, after 60 days notice from the date of filing. The Commission notes that, because the request by Kelson to cancel its market-based rate tariff is granted herein, any waivers and authorizations previously granted in connection with its market-based rate authority are no longer applicable.

8. In light of our acceptance of Kelson's notice of cancellation of its market-based rate tariff, we will dismiss the notice of change in status filed in Docket No. ER08-446-001 as moot.⁶ Accordingly, we will terminate the proceeding in Docket No. ER08-446-001.

The Commission orders:

(A) Kelson Energy III LLP's notice of cancellation of its market-based rate tariff is accepted, effective July 14, 2008.

(B) Kelson Energy III LLP's notice of change in status is dismissed as moot.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁴ 16 U.S.C. § 824d (2000).

⁵ 18 C.F.R. § 35.15 (2007).

⁶ On this basis, we find it unnecessary to address the arguments raised in the protest to the change in status filing.